

6 June 2022

**To: The Chair and Members of the  
Development Control and Regulation  
Committee**

# Update Sheet

## DEVELOPMENT CONTROL AND REGULATION COMMITTEE

Please find attached the update sheet for the meeting of the Development Control and Regulation Committee to be held as follows:

**Date:** Tuesday 7 June 2022  
**Time:** 10.00 am  
**Place:** Council Chamber - County Offices, Kendal, LA9 4RQ

**Dawn Roberts**  
**Executive Director – Corporate, Customer and Community Services**

Enquiries and requests for supporting papers to: Jackie Currie  
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**TO: The Chair and Members of the [Development Control & Regulation Committee](#)**

**FROM: The Executive Director - Economy and Infrastructure**

<b>Reference</b>	<b>Proposal Description / Site Location</b>	<b>Agenda Item &amp; Pages</b>
CA13/34	Application to register land as common land, CL58 Eskdale Common	AI 6 page 19- 65

### Update

The following email was received on May 29 2022 from Christopher J.R. Lasper from Cockermouth:

I am NOT available on 7th June; the below represents (neither more nor less) precisely what I would have addressed to the Committee; kindly therefore, confirm to me that an Officer will, on my behalf, read the below to the Committee:

“Has Jones understood:

“that this Application depends on the land being “common land” within paragraph 2(2)(b)(iv);

“that that Schedule is concerned with the correction of registration failures “under the 1965 Act”, i.e. the Commons Registration Act of that year;

“that section 22(1) of that Act expressly excludes highway land from the meaning of “common land” registrable under that Act; and

“that the bridleway that Jones has found to exist over part of the Eskdale Parcel is a highway?

“Why then, does Jones not except from her recommendation of acceptance of the Application the bridleway in the Eskdale Parcel?

“The Committee ought also to invite Jones to correct her advice that highway authority works on the bridleway are exempt from section 38 by virtue of subsection (6)(a); that advice is irreconcilable with published Defra views (paragraph 189 of Defra’s Explanatory Notes on the 2006 Act).”

<b>Reference</b>	<b>Proposal Description / Site Location</b>	<b>Agenda Item &amp; Pages</b>
	Wildlife and Countryside Act 1981 - Modification at Milestones, Penrith	AI 9 page 87- 104

### Update

The following email was received on 31 May 2022 from Paul Dugdale :

I am unable to attend the Council Meeting of 7th June as I am out of the country until 19th June 2022 on a holiday booked over a year ago

The applications to delete part of the footpath were made in December 2007 and early 2008, some 14 1/2 years ago during which time one of the applicants, Mr Bowler has died.

On 24th May 2022 I received an email advising me that the hearing to consider the application would be held on 7th June 2022, giving me 14 days notice and on the following date, 25th May i received your email informing me that the deadline re submission of any representation that I would like to make was midnight on 30th May, providing me with 6 days to respond. Infact the online report was not available immediately, reducing the time I have to respond to a couple of days.

This is hardly fair to the applicant. I have a number of concerns re this report:

## UPDATE – [7 JUNE 2022](#) - DEVELOPMENT CONTROL & REGULATION COMMITTEE

Paragraph 1.2 states that the purpose of the report is to consider all the available evidence and yet all of the evidence is not attached or included in this report .

Are the statements of the witnesses described at Paragraph 4.12 being made available to the Council. There is a statement from witness Heather Thompson who resided in the cottages from 1950 - 1976 (26 years) and she provided evidence that there was no footpath running down the south side of what is now The Hollies and describes in detail why this was not the case. This statement was provided as evidence with associated maps and diagrams. In addition there are accounts from John and Annie Hodgson, brother and sister who resided at the farm house or adjacent cottages for the period 1935 - 1974 and describe in detail how the route of the footpath did not cross the farmyard and did not run alongside the south of the farm buildings. It is my belief that Mr Hodgson and Ms Hodgson are now deceased and their evidence was never verified by any representative from the Highways Dept even though their accounts were presented to them. Accounts from witnesses who resided at this location between 1935 - 1976 have to be regarded as irrefutable evidence that the footpath did not follow the route which is being challenged

Paragraph 4.4 Definitive statement and map ( Appendix D and E refers) The original definitive statement states that the footpath went to a field gate onto road at Milestone House, continuing north easterly from field gate on opposite side of the road, through fields (field gates) etc This is supported by the map at appendix D which highlights the field gates (F.G) , These are shown to the south side of the original property, Milestone House. I have supplied photographic evidence of the footpath sign ( indicating PUBLIC FOOTPATH THACKA LANE) in a location well to the south of The Hollies, Milestone House farm located at a field gate and opposite a field gate on the other side of the road which would have taken you by the south side of Milestone Cottages. This photograph has not been included in the report. Milestone cottages at that time were enclosed within a walled area of minimal curtilage. ( as shown in Appendix I of this report

There is not and never has been a field gate either side of the route of the footpath to which this application applies, a site visit would afford clarity regarding this. There have been two site visits from members of Council Highways and both confirmed that the footpath could not have followed the route being challenged.

In addition there are two original sandstone walls blocking the route of this footpath, it would be impossible to cross these walls, which have significant drops and are retaining walls, the buildings are in a location where land drops several metres from back to front, these walls, a site visit would confirm, are obviously original and are necessary to retain the land behind them. I have provided the Highways staff with a number of photographs and maps throughout decades indicating the position of these walls

Paragraph 4.11 states that there is today little evidence of any gates ( i note the omission of the word field gates as described in both definitive statements) in fact there is no evidence of such which strongly supports the argument that the path did not exist at this location.

Paragraph 4.14 the map at Appendix D the thick black line as mentioned and the scale ( undetermined) make it unclear as to where exactly the line runs, however what is important is that quite clearly Field gates (F.G) are highlighted at both the points the footpath crosses the A6 road. I am unable to even see the properties known as Milestone cottages on this map

Paragraph 8.3 states that the applicant have only demonstrated that the definitive line could not have been walked in recent years , however I have provide witness evidence that it was not used, nor could it have been used for the period dating back to the 1920's , a period of nearly one hundred years. I have resided at The Hollies since 1994 (28 years) , no one has used this route during that time

Paragraph 8.4 I submit that on the balance of probabilities the route shown on the definitive map is incorrectly recorded and there is irrefutable evidence to support this

I have only had the time to highlight a few issues due to the limited time constraints placed on me by your timetable.

I think it only fair that the council reach a decision having viewed all of the available evidence.